

1 *E-filed on* 9/8/06

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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION  
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12 IN RE CYGNUS TELECOMMUNICATIONS  
13 TECHNOLOGY, LLC, PATENT  
LITIGATION

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15 THIS ORDER RELATES TO:  
All Actions

No. MDL-1423  
This Order Applies to All Actions

C-02-00142 RMW  
C-02-00145 RMW  
C-02-05437 RMW  
C-03-03594 RMW  
C-03-03596 RMW  
C-03-03378 RMW  
C-03-04003 RMW  
C-04-03001 RMW  
C-04-03365 RMW  
C-04-04247 RMW  
C-04-04359 RMW  
C-06-03843 RMW  
C-06-04295 RMW


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21 ORDER RE COST OF PRODUCING  
DOCUMENTS IN CYGNUS'S POSSESSION

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23 As noted in this court's July 14, 2006 order, Cygnus's counsel possesses approximately  
24 twenty-five boxes of documents from past Cygnus infringement actions which defendants want  
25 scanned and placed in the parties' discovery depository. Cygnus objected that it should not have to  
26 pay for producing these documents. The court preliminarily approved defendants' suggestion that  
27 they be allowed to have these documents scanned at their expense, with the possibility that they at  
28 some point in the future be allowed to seek reimbursement of some of this cost from Cygnus.

Defendants' liaison counsel estimated that it would cost \$17,000 to scan the contents of the twenty-five boxes of documents subject to the limitations of the July 14, 2006 order. *See* Report of Liaison Counsel (July 17, 2006). At the August 18, 2006 hearing, the parties informed the court that counsel for defendant AT&T Corporation, Gregory B. Wood, had assumed the responsibility for sorting through these boxes and deciding what should be scanned. The estimate seems reasonable enough for the undertaking as limited by Mr. Wood's sorting. Defendants may therefore scan these documents at their own expense and move for reimbursement from Cygnus at some future date, if appropriate. The court tentatively finds that Cygnus should bear the expense of scanning those documents that is required to disclose pursuant to Fed.R.Civ.P. 26(a)(1).

Also at the August 18, 2006 hearing, counsel for Cygnus reported that another defendant wanted to independently examine the contents of the boxes for itself, although all participating in the hearing agreed to abide by Mr. Wood's decision on what documents should be scanned. No party was identified as objecting to this procedure. If any defendant other than AT&T wishes to examine these boxes, it must obtain court approval before doing so.<sup>1</sup>

DATED: 9/8/06

  
 RONALD M. WHYTE  
 United States District Judge

<sup>1</sup> If counsel for the defendants in the newest additions to MDL proceedings before this court (those in cases C-06-03843 RMW and C-06-04295 RMW) object on the basis that they have not agreed to have Mr. Wood examine the documents in these boxes for them, they may apply to the court for permission to review the documents themselves.

1 **A copy of this order was mailed on \_\_\_\_\_ to:**

2 **Counsel for Plaintiff:**

3 John P. Sutton  
2421 Pierce Street  
4 San Francisco, CA 94115-1131

Kieran Patrick Fallon  
436 SW 8th Street  
Miami, FL 33130-2814

5 **Counsel for Defendants:**

6 Alan M. Weisberg, Steven M. Greenberg  
Christopher & Weisberg, P.A.  
7 200 E. Las Olas Avenue  
Suite 2040  
8 Fort Lauderdale, FL 33301

Matthew Francis McGahren  
Baum & McGahren  
6171 Crooked Creek Road  
Norcross, GA 30092

9 John C. Carey  
Rodriguez Greenberg & Paul  
10 1395 Brickell Ave, Suite 700  
Miami, FL 33131

Lori D. Greendorfer, Maxim H. Waldbaum  
Schiff Hardin LLP  
623 Fifth Avenue  
28th Floor  
New York, NY 10022

11 Felice B. Galant, Gregory B. Wood  
12 Fulbright & Jaworski L.L.P.  
865 South Figueroa Street  
13 Twenty-Ninth Floor  
Los Angeles, CA 90017

Thomas T. Tamlyn  
Yeskoo Hogan & Tamlyn, LLP  
535 Fifth Avenue  
New York, NY 10017

14 Joseph P. Zammit  
15 Fulbright & Jaworski  
666 Fifth Avenue  
16 New York, NY 10103

Peter S. Canelias  
Law Offices of Peter S. Canelias  
420 Lexington Avenue  
Suite 2148  
New York, NY 10170

17 John F. Mardula, Jon L. Roberts  
18 Roberts Mardula & Wertheim, LLC  
11800 Sunrise Valley Drive  
Suite 1000  
19 Reston, VA 20191-5302

David T. Alexander  
MBV Law LLP  
855 Front Street  
San Francisco, CA 94111

20 Richard B. Sheldon  
Mitchell Silberberg & Knupp LLP  
21 11377 West Olympic Boulevard  
Los Angeles, CA 90064-1683

Jon M. Gibbs  
Akerman, Senterfitt  
255 S. Orange Avenue  
Suite 1700  
Post Office Box 0231  
Orlando, FL 32802-0231

22 Jeffrey L. Silvestrini, Brian F. Roberts  
23 Cohne Rappaport & Segal  
P.O. Box 11008  
24 Salt Lake City, UT 84147-0008

Elizabeth E. Green, R. Scott Shuker  
Gronek & Latham, LLP  
390 N. Orange Avenue  
Suite 600  
Orlando, FL 32801

25 Raymond J. Etcheverry  
Parsons, Behle & Latimer  
26 One Utah Center  
201 South Main Street,  
27 Suite 1800, Post Office Box 45898  
Salt Lake City, UT 84145

Meredith L. Caliman  
Meredith L. Caliman Law Offices  
3858 Carson Street, Suite 120  
Torrance, CA 90503-6705

Gregory J. Nelson  
Nelson & Roediger  
3333 E Camelback Road, Suite 212  
Phoenix, AZ 85018

1 Peter Neil Greenfeld  
Greenfeld Law Group  
2 3333 E Camelback Road, Suite 212  
Phoenix, AZ 85018-2324

3 Matthew McGahren  
4 Baum, McGahren & Chiu, LLC  
6171 Crooked Creek Road  
5 Norcross, GA 30092

**Courtesy Copy:**

Clerk of the Panel  
Judicial Panel on Multidistrict Litigation  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, N.E.  
Room G-255, North Lobby  
Washington, DC 20002-8004

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7 Counsel for plaintiff is responsible for ensuring that involved attorneys not on the above service list  
8 receive a copy of this order, if necessary, and shall inform the court of any omissions.  
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